

**Appl. No. : 10/712,085**  
**Filed : November 13, 2003**

### **REMARKS**

In response to the Office Action mailed October 12, 2005, Applicant respectfully requests the Examiner to reconsider the above-captioned patent application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 1-107 remain pending. Claims 12, 22, 32, 82-85, 88 and 95-96 have been amended.

In the Office Action mailed October 12, 2005, the Examiner disposed of the claims as follows:

<b>CLAIM NOS.</b>	<b>DISPOSITION/REJECTION</b>		
	<b>BASIS</b>	<b>PRIMARY REFERENCE</b>	<b>SECONDARY REFERENCE(S)</b>
1-21, 30-81, 97-107	Dbl. pat. (obv.)	McCarthy US 6,482,059	n/a
22-29	Dbl. pat. (obv.)	McCarthy US 6,146,224	n/a
22	102(b)	Garofalo US 4,887,985	n/a
22-23, 25-27	103(a)	Garofalo US 4,887,985	n/a
12, 32-33, 82-96	112 ¶ 2	n/a	n/a

The Examiner also objected to the specification for various informalities.

#### **Double Patenting**

Claims 1-81 and 97-107 stand rejected for obviousness-type double patenting over Applicant's U.S. Pat. No. 6,482,059 or 6,146,224. Applicant submits herewith a Terminal Disclaimer which overcomes the rejection of these claims for double patenting.

#### **Rejections Over Garofalo**

Claims 22-23 and 25-27 stand rejected as anticipated by, or obvious in view of, Garofalo. However, Applicant has amended Claim 22 to recite:

22. (CURRENTLY AMENDED) A method for connecting a pivoting blade region to a swim fin, comprising providing a shoe member having a relatively flexible portion made with a relatively flexible thermoplastic material, said shoe member having a

**Appl. No. : 10/712,085**  
**Filed : November 13, 2003**

sole member and said swim fin having at least one blade member, said sole and said at least one blade member are made with a relatively stiffer thermoplastic material, said shoe member having a toe region and said shoe member having at least two elongated stiffening members extending in front of said toe portion and being spaced apart in a sideways manner, said at least one blade member being pivotally connected to said swim fin in front of said toe region in an area between said stiffening members, said at least one blade member also being connected to said stiffening members with at least one flexible member, said blade member having a lengthwise alignment and said blade member having an elongated region of increased flexibility that has an alignment that is at an angle to said lengthwise alignment of said blade member.

Applicant respectfully submits that Garofalo fails to teach or suggest a method of the type recited in newly amended Claim 22. Accordingly, Applicant further submits that the rejection of Claim 22 (as well as Claims 23 and 25-27 dependent therefrom) over Garofalo should be reconsidered and withdrawn.

#### Rejections for Indefiniteness

Claims 12, 32-33 and 82-96 stand rejected for indefiniteness. Applicant has amended Claims 12, 32, 82-85, 88 and 95-96 in a manner which is believed to cure the indefiniteness noted by the Examiner.

#### Specification

Applicant has amended the specification to address the informalities noted by the Examiner.

#### Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to

Appl. No. : 10/712,085  
Filed : November 13, 2003

presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Mark J. Kertz at (949) 721-6318 to resolve such issue(s) promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Jan. 12, 2006

By: Mark J. Kertz

Mark J. Kertz  
Registration No. 43,711  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404

2285129  
011206